

10.0 GRIEVANCES AND APPEALS**10.10 GRIEVANCES**

The employee grievance procedure is designed to:

- A. resolve the grievance in an equitable and timely manner to avoid bias and unfair employment practices;
- B. settle the grievance informally at the lowest agency level whenever possible;
- C. correct, if possible, the cause of the grievance to prevent future similar complaints;
- D. assure fair and equitable treatment of all employees and to promote harmonious relations generally among employees, supervisors, and administrative staff;
- E. afford the aggrieved party all the applicable safeguards of procedural due process;
- F. guarantee that an employee who files a grievance is free from reprisal.

10.10.1 Administration of the Grievance Procedure

It is the policy of the State Personnel Board that the appointing authority shall administer the grievance procedure.

- A. The appointing authority shall ensure that the formal grievance procedures are disseminated to all employees.
- B. Grievance procedures shall begin with the immediate supervisor and the employee, and the final determination shall be approved by the appointing authority.
- C. The appointing authority shall allow employees reasonable time away from the work station for formal processing of grievances.
- D. The appointing authority shall ensure that adequate records and reports are kept pertaining to the nature of grievances brought, the number brought, and the number resolved (including the procedural step at which resolution occurred).
- E. Each appointing authority shall operate under the grievance procedure contained in this Section.

10.10.2 Who May File a Grievance

A permanent state service employee may file a grievance on those issues listed in Section 10.10.3, by following the grievance procedure contained in this Section.

A probationary employee in a state service position or a non-state service employee in, or applicant for, an authorized employment position in an agency which employs state service employees may grieve only alleged acts of discrimination based on race, color, creed, religion, national origin, sex, age, disability or political affiliation in any personnel action or employment practice.

10.10.3 Grievable Issues

The following issues are grievable under the state service grievance procedure:

- A. disciplinary actions, including written reprimands, demotions, and suspensions;
- B. application of personnel policies, procedures, rules, regulations, ordinances, and statutes;
- C. acts of reprisal against an employee for using the grievance procedure;
- D. complaints of discrimination on the basis of race, color, creed, sex, religion, national origin, age, disability, or political affiliation; and/or a violation of a right otherwise specifically protected by the U.S. Constitution or other law;
- E. any matter of concern or dissatisfaction to an employee if the matter is subject to the control of agency management (except as provided in Section 10.10.4 herein);
- F. performance appraisal ratings to the extent they affect an employee's employment status or compensation;
- G. permanent relocation of an employee as a disciplinary measure, for political reasons and/or where the employee can present substantive evidence that the management decision to relocate the employee was arbitrary or capricious;
- H. dismissal or adverse action taken against an employee who reports an alleged improper governmental action to a state investigative body, as defined in Section 25-9-171 of the Mississippi Code of 1972, Annotated, as amended.

10.10.4 Non-Grievable Issues

The following are non-grievable issues under the state service grievance procedure:

- A. issues which are pending or have been concluded by direct appeal through administrative or judicial procedures;
- B. temporary work assignments which do not exceed ninety (90) calendar days;
- C. budget and organizational structure, including the number or assignment of employees or positions in any organizational unit;
- D. duties/performance standards established as criteria for performance appraisal;
- E. the selection of an individual by the appointing authority, department head, or designee to fill a position through promotion, transfer, demotion, or appointment unless it is alleged that selection is in violation of a written agency policy or of a State Personnel Board rule on filling vacancies;
- F. internal security practices established by the appointing authority, department head, or designee;
- G. termination or layoff from duties because of shortage of funds or work, material change in duties or organization, or a merger of agencies (Refer 7.60);
- H. any matter which is not within the jurisdiction or control of the appointing authority;
- I. the content of published agency policy;
- J. an action by an agency pursuant to federal or state law or directives from the Governor's office or court order;
- K. establishment and revision of the compensation plan, and the policies, procedures, rules and regulations pertaining thereto;
- L. position classifications;
- M. employee benefits.

GENERAL INFORMATION

If an adverse action has been taken against an employee and the employee has been provided due process, the grievance procedure is deemed to be exhausted and the employee may immediately appeal to the Employee Appeals Board.

If the employee does not present the grievance within the specified time frame, it is considered waived.

If the employee does not advance the grievance to the next step within the specified time frame, the last management decision stands.

If management does not react within the specified time frame, the employee may advance the grievance to the next level unless an extension of time is granted to management to respond by written mutual agreement.

All time limits may be extended by mutual written agreement.

It is the responsibility of the aggrieved employee's supervisor and agency personnel director to make certain that all grievances are handled in an expeditious manner and without prejudice.

GRIEVANCE PROCEDURAL STEPS**Step I**

- A. An employee who has a grievable complaint arising from an action or inaction subject to the control of management must identify the grievance orally or in writing with his or her immediate supervisor within seven (7) working days of becoming aware of the cause of the complaint.
- B. The immediate supervisor will have three (3) working days from the date of the initial discussion to orally inform the employee of his or her answer. (The supervisor shall write a memorandum for record and have the aggrieved employee sign it.)
- C. If the problem is not resolved, the employee may submit in writing (on SPB Form 1010-81) a description of the grievance and the specific relief requested within three (3) working days following the immediate supervisor's verbal response. The written statement of the grievance should contain the name, address, and

telephone number of the individual or authorized representative filing the grievance; the name of the employee, identity of the agency, and job classification; the date; a brief and specific description of the situation, incident, or condition being grieved and reasons therefore; identity of witnesses, if any; the remedy or relief the individual is seeking and the signature of the individual filing the grievance and properly dated by this individual.

- D. The supervisor is required to give written response within three (3) working days.
- E. The personnel officer or representative of the personnel office may assist in the filing of the grievance or answer any questions the employee may have in connection with filing the grievance.

Step II

- A. If not satisfied with the Step I written decision, the employee may indicate (on the same SPB Form 1010-81) the desire to have the grievance advanced to the next step. The grievance must be submitted to the next level of management within three (3) working days following receipt of the Step I supervisor's response.
- B. The Step II supervisor is required to conduct an investigation of the grievance and meet with the aggrieved employee within three (3) working days after receipt of the grievance form. This meeting will be informal with only the employee, the Step II supervisor, and the appropriate witnesses present.
- C. The Step II supervisor is required to give the employee a written response within three (3) working days after this informal interview.

Step III

- A. If the second step written response is not acceptable to the employee, the employee should specify (on the same SPB form 1010-81) the desire to advance the grievance to the third step and forward the grievance to the next level of management within three (3) working days after receipt of the Step II response.
- B. The Step III supervisor or designated representative is required to investigate the matter and meet with the employee within three (3) working days after receipt of the grievance form. This meeting is also informal with only the employee, the Step III supervisor, and the appropriate witnesses present.

- C. The Step III supervisor is required to respond in writing within three (3) working days of the meeting. (This supervisor should consult with the agency personnel director prior to preparing the response in order to obtain assistance in resolving the grievance).

Step IV

- A. If the third step does not resolve the grievance, the employee should use the same form (SPB Form 1010-81) to express the desire to advance the grievance to the fourth step and forward the grievance to the agency head within three (3) working days after receipt of the Step III response.
- B. Agencies with no Step III level of management would handle the responsibilities of Step IV after Step II procedures have been exhausted and the Step II supervisor would be required to follow the procedures of Step III C. in issuance of the requisite written response.
- C. The Step IV supervisor or designated representative is required to review the grievance and relevant information and meet with the employee within three (3) working days after receipt of the grievance form.
- D. The agency head is required to present a final answer within ten (10) working days after the meeting.

TIME LIMIT

If a grievance is not presented within the time limit as set forth above, it will be considered waived. If a grievance is not advanced to the next step within the specified time limit or an agreed extension thereof, it will be considered settled on the basis of the supervisor's, appointing authority's, or designee's last answer. If the supervisor, appointing authority, or designee does not answer the grievance within the specified time limit, the employee may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. Time limits on each step may be extended by mutual written agreement of the parties involved.

STEP ONE

Employee

1. Action occurs.
2. Present orally or in writing to the immediate supervisor within seven (7) working days.

Immediate Supervisor

3. Provide an oral answer to employee not more than three (3) working days after the procedural number two (2) interview and discussion. Both employee and immediate supervisor sign a written memorandum for record of answer prepared by immediate supervisor.

Employee

4. If problem is not resolved, employee may submit grievance form not more than three (3) working days after receipt of oral response from immediate supervisor. A representative of the agency personnel office may be available to answer questions or assist the employee in filing the grievance.

Immediate Supervisor

5. Required to provide written response within three (3) working days of receipt of written grievance form.

STEP TWO

Employee

6. If the grievance is not resolved by Step 1, may submit the same grievance form to the next level of management (the immediate supervisor) within three (3) working days of procedure number five (5) above.

Step II
Supervisor

7. Required to conduct an investigation of the grievance and meet with employee within three (3) working days after receipt of grievance form.

Step II
Supervisor

8. Written response should be provided to employee within three (3) working days of meeting.

STEP THREE

Employee

9. If not satisfied with outcome of Step II deliberations, may submit same grievance form to next level of management within three (3) working days after receipt of Step II response in procedure number eight (8) above.

Step III
Supervisor

10. Required to investigate the matter and meet with employee within three (3) working days after receipt of grievance form in procedure number nine (9) above.

Step III
Supervisor

11. Required to respond in writing to employee within three (3) working days of meeting. Copy of response should be forwarded to agency personnel director who should assist in resolution of the grievance.

STEP FOUR

Employee

12. If grievance is not resolved, the employee may present the grievance form to agency head within three (3) working days after receipt of the Step III response. (If there is not a Step III level of management, then Step III should be disregarded. A copy of the Step II Supervisor's response issued at procedure number eight (8) should be forwarded to the agency personnel director. The agency personnel director would, therefore, assist in the resolution of the grievance at the Step II level.)

Agency Director
or Designated Representative

13. Required to review the grievance and relevant information and to meet with the employee within three (3) working days after receipt of grievance form. Employee may have representation and appropriate witnesses present.

Agency Director

14. Required to present a final answer in writing to the employee within ten (10) working days after the meeting.

10.20 SEXUAL HARASSMENT

Each appointing authority shall provide a work place free from sexual harassment. Sexual harassment may include, but is not limited to, requests for sexual favors, unwelcome sexual advances, threats, bodily contact, or other deliberate verbal or physical conduct of a sexual nature. Also included are remarks, gestures, physical contact, display or circulation of written or electronic materials, pictures or objects derogatory to any employee. Such behavior is strictly forbidden and will not be tolerated at any organizational level. Any and all acts of retaliation against persons who utilize the grievance procedures are expressly prohibited.

No employee or applicant should endure sexual harassment. Any person believing he/she has been sexually harassed should immediately report the incident to management. The appointing authority shall take appropriate corrective action. This rule applies equally to same sex harassment.

Sexual harassment is strictly prohibited at any organizational level. This includes co-workers, same-level employees or employees and supervisors. Sexual harassment is expressly detrimental when the offending employee is in a position to affect the compensation or employment status of the person being harassed.

Sexual harassment is behavior of a sexual nature which is uninvited and unwelcome verbal or physical conduct directed at an employee because of his or her sex. Sexual harassment does not refer to occasional compliments of a socially appropriate nature.

Specifically, sexual harassment may include, but is not limited to:

- repeated offensive sexual flirtations
- repeated requests for dates
- advances or propositions
- verbal abuse of a sexual nature
- graphic or degrading comments about appearance
- display of sexually suggestive objects, appearance, pictures or images
- offensive or degrading cartoons or jokes
- offensive or degrading e-mail or electronic images

No employee should imply, suggest, or threaten an applicant's or employee's cooperation of a sexual nature (or refusal thereof) will have any effect on the individual's employment status, including, but not limited to assignment, compensation, advancement or other condition of employment.

Any permanent state service employee, probationary state service employee, non-state service employee in, or applicant for, an authorized employment position in an agency which employs state service employees, may file a grievance in accordance with the sexual harassment grievance procedure below.

10.20.1 Special Grievance Procedure for Sexual Harassment

Any applicant, probationary state service employee, permanent state service employee, or non-state service employee alleging sexual harassment may:

- A. File a grievance with his/her supervisor in accordance with the standard Grievance Procedural Steps (See Section 10.10.);

OR

- B. If the source of the harassment is the employee's supervisor, the employee may skip a level of management by proceeding to Step Two and file the grievance directly with the harassing supervisor's supervisor;

OR

- C. File the grievance with the agency Personnel Officer, Deputy Director or Executive Director.

Regardless of outcome, all grievances alleging sexual harassment shall be forwarded to the appointing authority.

Acts or statements of a retaliatory nature against employees who file grievances based upon sexual harassment and who utilize the grievance procedure outlined and referenced above are strictly prohibited.

In addition to the agency Personnel Officer, the designee of the State Personnel Director shall be available to advise and counsel employees on the sexual harassment grievance procedure. In such cases:

- A. The agency Personnel Officer or staff designee of the State Personnel Director may be advised to assist in the filing and resolution of a grievance,

OR

- B. In cases of widespread harassment, the employee may be advised to file an appeal directly with the Employee Appeals Board without exhausting agency level remedies.

10.30 INTERIM SPECIAL AMERICANS WITH DISABILITIES ACT (ADA) GRIEVANCE PROCEDURE

- A. An applicant for an employment position or employee who has reason to believe that they have been unlawfully discriminated against by a State agency on the basis of disability may file a grievance in accordance with this Grievance Procedure. Implementation of this Grievance Procedure is not intended to prohibit an applicant or State employee from utilizing the existing grievance procedures set forth in Section 10.10. Grievants are not required to exhaust this Interim Special ADA Grievance Procedure prior to filing a complaint with an applicable federal agency.
- B. The Grievance Procedure begins with the individual who is filing the grievance, by preparing and submitting a written statement. The statement should contain the name, address, and telephone number of the individual or authorized representative filing the complaint; a brief and specific description of the situation, incident, or condition being grieved and reasons therefor; identity of the grievant; identity of witnesses, if any; the remedy the individual is seeking; and the signature of the individual filing the grievance properly dated by this individual.

- C. The grievance should be submitted to the ADA coordinator of the agency where the alleged discrimination occurred within seven (7) work days after the alleged violation occurred.
- D. The agency's ADA coordinator or a designee will have three (3) work days to provide to the grievant a written acknowledgment of the grievance.
- E. The agency ADA coordinator or a designee will promptly conduct a review of the issues involved in the grievance to ascertain whether or not an informal resolution of the grievance can be achieved. If an informal resolution is possible and mutually agreeable by the parties involved, the agency ADA coordinator will facilitate arrangement of the resolution and make a record of this agreement. If no informal resolution is possible, the ADA coordinator or a designee will conduct an investigation of the grievance and provide a written response to the grievant outlining possible accommodations, if any, for resolution of the grievance. This response shall be approved by the agency head or appointing authority and must be completed no later than fifteen (15) work days from the agency's receipt of the grievance.
- F. If a grievance is not presented within the time lines as set forth hereinabove, it will be considered waived absent an extension by written mutual consent. If the ADA coordinator or a designee does not answer or acknowledge receipt of the grievance within the specified time lines, the grievant may elect to treat the grievance as denied at that point and immediately appeal the grievance to the Mississippi Employee Appeals Board unless an extension of time is granted to the ADA coordinator or designee to respond by written mutual agreement.

10.40 APPEALS

The purpose of the Employee Appeals Board is to provide a fair and impartial forum beyond the agency level for a full hearing on a grievable action and/or a dismissal.

10.40.1 Notice of Appellants' Rights

Each agency shall give notice to all applicants and employees of their rights regarding appeals and shall make available copies of the administrative rules of the Employee Appeals Board.

10.40.2 Who May Appeal; Actions Which May Be Appealed

- A. A permanent state service employee may appeal any action adversely affecting his or her compensation or employment status.
- B. A permanent state service employee may appeal a grievable action (refer to Section 10.10.3.) and/or a dismissal.
- C. No person may appeal a non-grievable action. (Refer to Section 10.10.4.)
- D. A permanent state service employee, probationary employee in a state service position, or non-state service employee in, or applicant for, an authorized employment position in an agency which employs state service employees, may appeal alleged acts of discrimination based on race, color, creed, religion, national origin, sex, age, disability, or political affiliation in any personnel action or unlawful employment practice.
- E. A permanent state service employee, probationary employee in a state service position, or non-state service employee in, or applicant for an authorized employment position in an agency which employs state service employees, may appeal alleged acts of retaliation based upon the employee or applicant's reports of alleged improper government action to a state investigative body.
- F. An employee may appeal the decision that he/she is not eligible to receive donated leave because the injury or illness of the employee or member of the employee's immediate family is not, in the appointing authority's determination, a catastrophic injury or illness.

10.40.3 Exhaustion of Remedies

- A. No person may file an appeal with the Employee Appeals Board until all agency-level grievance procedures have been exhausted in accordance with State Personnel Board policies, rules and regulations, with exceptions as noted elsewhere in the State Personnel Board Policies and Procedures Manual. When the disciplinary action results in dismissal, an appeal may be filed directly with the Employee Appeals Board.
- B. Except as authorized under federal law, no aggrieved party may file a petition for judicial review with a court of competent jurisdiction until a final written decision and order on a full board review has been filed by the Employee Appeals Board.

10.40.4 Perfection of Appeal by Timely Filing

- A. All appeals to the Employee Appeals Board shall be initiated by filing a written Notice of Appeal (pages 10.F.3 - 10.F.5). Notice of Appeal forms shall be made available by the Employee Appeals Board to all state agencies and employees.
- B. A Notice of Appeal must be filed within fifteen (15) calendar days after the date a person receives written notice of the final decision of an alleged grievable action/dismissal or within fifteen (15) calendar days after the effective date of such action, whichever occurs first.
- C. A non-refundable fee of fifty dollars (\$50.00) in the form of a cashier's check, bona fide attorney's check, or money order made payable to the Employee Appeals Board shall be filed by the appealing party with each Notice of Appeal. Cash or personal checks will not be accepted.

10.40.5 Content of Notice of Appeal

- A. The Notice of Appeal shall contain:
 - 1. the names and mailing addresses of all parties and, if known, the names and mailing addresses of their attorneys, if any;
 - 2. if applicable, the appealing party's (i) employing agency, (ii) assigned work station (town, city, county) and organizational location (bureau, division, branch) within employing agency, (iii) immediate supervisor, (iv) job title, (v) date of hire, and (vi) date of termination;
 - 3. a statement, in sufficient detail, of the facts upon which the appeal is taken, including the effective date of any alleged grievable action, and why such action is in error;
 - 4. a statement of the final action taken and/or decision made as a result of the agency-level grievance proceedings, including the effective date of such final action;
 - 5. a statement of the relief requested.
- B. The Notice of Appeal shall be accompanied by copies of all documents generated by the agency prior to filing the appeal. Such documents, when applicable, shall include, but not be limited to, performance appraisal documents, correspondence

between the appealing party and the responding agency, written reprimands, grievance forms, pre-disciplinary notice, and final disciplinary notice.

10.40.6 Jurisdiction

When an appeal is filed, the Employee Appeals Board shall determine whether or not it has jurisdiction. If not, the board shall on its own motion dismiss same and mail or deliver a copy of the order of dismissal to all parties.

10.40.7 Parties

Unless the Notice of Appeal names some other respondent, the appealing party's employing state agency shall be considered the only respondent.

10.40.8 Notice To Responding Agency of Filing of Appeal

When an appeal is filed, the Employee Appeals Board shall mail or deliver a copy of the Notice of Appeal to the responding party, or parties, named therein which shall be official notice of same.

10.40.9 Consolidation of Appeals

When two (2) or more pending appeals involve a common question of law or fact, the Employee Appeals Board may on its own motion order that the appeals be consolidated.

10.40.10 Assignment of Hearing Officer; Setting of Hearing

- A. When an appeal is filed, the Employee Appeals Board shall assign a Hearing Officer and set a date, time and place for the hearing.
- B. When, in the opinion of the Chief Hearing Officer, the issues and circumstances of an appeal warrant that the hearing be conducted before the full board instead of a single Hearing Officer, he or she may issue an order or notice to that effect. A copy of such order or notice shall be mailed or delivered to all parties.
- C. A Notice of Hearing shall be sent via Certified U.S. Mail, Return Receipt Requested, to each party or attorney. After receipt of such notice, each party shall acknowledge such receipt by completing and returning an Acknowledgment of Receipt of Notice of Hearing form provided with the Notice of Hearing.

- D. No hearing shall be set before thirty (30) days have elapsed after the filing date of the Notice of Appeal.
- E. Continuances will not be considered within ten (10) days prior to the hearing for any reason less than good cause, serious illness or death.

10.40.11 Continuances; Rescheduling of Hearings

- A. Continuances requested by either party shall be granted within the discretion of the Employee Appeals Board only for good cause. The Employee Appeals Board may assess a reasonable fee against the party requesting the continuance.
- B. When a continuance is granted to a party whose request is made less than ten (10) days before the hearing date, the Employee Appeals Board may award reasonable costs, including attorney fees, incurred in connection with the continuance to any other party.
- C. After the Employee Appeals Board has granted the continuance, the moving party shall be responsible for contacting the opposing party and the Hearing Officer in order that they may work out a suitable date for the hearing. When the hearing date has been confirmed, the moving party shall contact the Employee Appeals Board office so they may employ a court reporter and reserve a courtroom.
- D. A written Motion and proposed Order including the new date and time of the hearing must be prepared by the moving party. The original order should be submitted to the Hearing Officer for signature, and the original Motion and copy of the Order should be forwarded to the Employee Appeals Board office.
- E. When a continuance is granted or a hearing is rescheduled or relocated for any reason, each party shall be responsible for notifying their witnesses of the date, time and location of the hearing.

10.40.12 Witnesses

- A. Each party, no later than ten (10) days prior to the hearing date, shall file with the Employee Appeals Board a list of witnesses such party will call to testify at the hearing. The list shall contain for each witness:
 - 1. name;
 - 2. current residential street address;

3. employer;
 4. street address of employer; and
 5. brief summary of testimony to be given.
- B. The issuance of subpoenas to compel the attendance of witnesses shall be governed by Section 10.40.13.
- C. Notification of witnesses in case of a continuance or rescheduling of a hearing shall be governed by Section 10.40.11.E.

10.40.13 Subpoenas

- A. The Employee Appeals Board shall have the authority to issue subpoenas in connection with a hearing.
- B. To compel the attendance of a witness, or witnesses, any party to an appeal may file with the Employee Appeals Board a written Request for Issuance of Subpoenas. Each request shall contain for each witness:
1. name;
 2. street address where the witness may be readily found for service of the subpoena (If the only available address is a route number or box number, the party requesting the subpoena must provide complete and accurate directions for locating the witness.); and
 3. brief statement supporting the relevance and materiality of the testimony of the witness to the appeal.
- C. To compel the production of documentary evidence, any party to an appeal may file with the Employee Appeals Board a written Request for Issuance of Subpoena Duces Tecum. Each request shall specify:
1. name of person who is to produce such documentary evidence;
 2. street address where such person may be readily found for service of the subpoena (If the only available address is a route number or box number, the party requesting the subpoena must provide complete and accurate directions for locating the witness.); and
 3. brief statement supporting the relevancy and materiality of the documentary evidence to the appeal.
- D. Each request must be filed no later than ten (10) days prior to the hearing date.

- E. A fee of twenty-five dollars (\$25.00) for each person to be subpoenaed shall accompany the request. The fee shall be in the form of a cashier's check, bona fide attorney's check, or money order made payable to the sheriff of the county where the person to be subpoenaed may be found. In the event that additional subpoenas are required at the same address, a fee of one dollar (\$1.00) each shall accompany these requests.
- F. In case of the failure of any person to comply with any subpoena issued by the Board, the requesting party may invoke the aid of any court of this state of general jurisdiction. The court may thereupon order such person to comply with the requirements of the subpoena. Failure to obey the order of the court may be punished by the court as a contempt thereof.
- G. Notification of witnesses in case of a continuance or rescheduling of a hearing shall be governed by Section 10.40.11.E.

10.40.14 Failure to Appear at Hearing

- A. If an appealing party, without good cause, fails to appear at the hearing, such failure may be considered as a withdrawal of the appeal, and the presiding Hearing Officer may dismiss the appeal.
- B. If any party fails to appear at the hearing, the Employee Appeals Board may order that such party reimburse the opposing party, or parties, reasonable costs incurred.

10.40.15 Conduct of Hearing

- A. A hearing before the Employee Appeals Board shall be *de novo*, and the appealing party shall be afforded all applicable safeguards of procedural due process.
- B. The Employee Appeals Board shall have the authority to administer oaths and affirmations.
- C. Each party may be represented by an attorney. Employees may choose to represent themselves.
- D. The responding agency may have a representative, in addition to its attorney, remain in the hearing room during the entire course of the hearing, even though the representative may testify. The appealing party may remain in the hearing room throughout the hearing.

- E. The presiding Hearing Officer may clear the hearing room of witnesses not under examination.
- F. The presiding Hearing Officer shall have the authority to maintain the decorum of the hearing and shall take reasonable steps to do so when necessary, including clearing the hearing room of any person who is disruptive.

10.40.16 Evidence

- A. Hearings shall be informal, and technical rules of evidence shall be relaxed.
- B. All witnesses shall testify under oath and shall be subject to cross examination.
- C. The presiding Hearing Officer shall have the authority to admit into the record any evidence which, in his or her judgment, has a reasonable degree of probative value and trustworthiness. The presiding Hearing Officer shall have the authority to exclude evidence which is irrelevant, immaterial, lacking in probative value, untrustworthy or unduly cumulative.
- D. In the appeal of an action adversely affecting compensation or employment status, the presiding Hearing Officer shall hear or receive evidence on only those reasons and allegations contained in the responding agency's final notice to the employee of such action.
- E. Documents received into evidence by the presiding Hearing Officer shall be marked by him or her, or under his or her direction, and filed for the record of the appeal.
- F. Rebuttal and surrebuttal evidence may be heard in the discretion of the presiding Hearing Officer.
- G. Summations of the evidence and the law may be heard in the discretion of the presiding Hearing Officer.

10.40.17 Preservation of Record of Hearing; Transcription of Record of Hearing

- A. In order to preserve the record of the hearing, the Employee Appeals Board shall engage and/or contract with a court reporter to make a stenographic and/or electronic recording thereof. The responding agency, or agencies, shall be assessed a reasonable fee to defray the cost of recording the hearing.

- B. It shall be the responsibility of any party desiring to have the recording of the hearing transcribed to:
 - 1. arrange, on his or her own initiative, for the court reporter to transcribe the recording of the hearing; and
 - 2. pay all fees and expenses for such transcription directly to the court reporter.
- C. It shall be the responsibility of any party desiring a copy of the transcript of the hearing to obtain the copy directly from, and pay any fees and expenses involved directly to, the court reporter.

10.40.18 Employee Appeals Board Copy Fees

Regular copies \$1.00 per page
Orders from Minute Books \$5.00 minimum

10.40.19 Order of Proof; Burden of Proof

- A. At the hearing of an appeal, the party administering disciplinary action shall be the first to present all of the evidence on its case in chief. The employee upon whom discipline is sought to be administered shall follow the other party in presenting same. In the event there is a question concerning which party should proceed first, the matter should be heard as directed by the Hearing Officer in his sole and exclusive discretion.
- B. The appealing party shall have the burden of proving that the action taken against the employee is arbitrary, capricious, against the overwhelming weight of the evidence and merits the relief requested.
- C. An appealing party, who is a permanent state service employee and who has by written notice been dismissed or otherwise adversely affected as to his or her compensation or employment status, shall be required to furnish evidence that the reasons stated in the notice of such action are not true or are not sufficient grounds for the action taken.

10.40.20 Order To Be Filed Upon Completion of Hearing

Upon conclusion of the appeal hearing, and after all evidence has been presented, the presiding Hearing Officer, within a reasonable time thereafter, shall prepare and file a

written decision and order therefrom. A copy of such decision and order shall be sent by the Board, via Certified U.S. Mail, Return Receipt Requested, to each party or attorney.

10.40.21 Compliance with Orders

All parties shall promptly comply with all orders of the Employee Appeals Board.

10.40.22 Relief To Be Granted

- A. The Employee Appeals Board may reinstate a prevailing party into employment with his or her responding agency and restore all his or her employee rights and benefits including back pay, medical leave and personal leave. The Board may also restore retirement benefits provided the integrity of such benefits remains uncompromised in accordance with all applicable laws, policies, rules and regulations.
- B. The Employee Appeals Board may modify an action of a responding agency but may not increase the severity of such action on the appealing party. If the responding agency has acted in accordance with the published policies, rules and regulations of the State Personnel Board, and if the personnel action taken by the responding agency is allowed under said policies, rules and regulations, the Employee Appeals Board shall not alter the action, including but not limited to the compensation paid to the employee, taken by the agency.

10.40.23 Bill of Exceptions

- A. In connection with the hearing of an appeal, any party aggrieved by any matter that does not appear on the record may file a sworn Bill of Exceptions to preserve such matter for appellate review. A Bill of Exceptions must set forth the specific facts upon which prejudice is claimed.
- B. Any opposing party may file a sworn statement that the Bill of Exceptions is not correct. Such statement must set forth the specific facts on which error is claimed.
- C. The presiding hearing officer shall review the Bill of Exceptions and the response filed by the opposing party and if the Bill of Exceptions is determined to be true by the hearing officer, he shall sign it.
- D. A Bill of Exceptions and any statement in response thereto shall be made a part of the record of the appeal.

- E. A Bill of Exceptions must be filed no later than five (5) days after the filing date of the final order in connection with the hearing. A statement in response to a Bill of Exceptions must be filed no later than ten (10) days after the filing date of the Bill of Exceptions.

10.40.24 Review by the Full Board

- A. Any party aggrieved by the final written decision and order of a presiding Hearing Officer entered on the hearing of an appeal may file a written Request for Review by Full Board.
- B. The request must be filed within ten (10) calendar days after the date the final order is filed.
- C. Any party may file an original transcription of the recording of the hearing, pursuant to Section 10.40.17, to be considered by the full board on review. Such transcription of the record shall be filed within thirty (30) days after the filing date of the request for review.
- D. Any party may file a written brief to be considered by the full board on review. Such brief must be filed within thirty (30) days after the filing date of the transcript. These are not response briefs; briefs are to be filed simultaneously by due date.
- E. The full board shall base its review on:
 - 1. the pleadings;
 - 2. any documentary evidence received and filed for record at the hearing by the presiding Hearing Officer;
 - 3. the original transcription of the hearing, if filed; and
 - 4. briefs of the parties, if filed.
- F. The full board shall issue a final written decision and order on the review within a reasonable time after the final date for filing all documents to be considered on review.

10.40.25 Judicial Review

Any party aggrieved by a final written decision and order of the Employee Appeals Board may appeal such order in the manner provided by applicable laws and statutes.

10.40.26 Pleadings and Briefs

- A. In connection with the hearing of an appeal, pleadings and briefs which the parties may file shall be limited as follows:
 - 1. The appealing party may file, in addition to a Notice of Appeal, a brief on any issues of law in connection with the appeal. The brief must be filed no later than ten (10) days before the hearing date.
 - 2. Any responding party may file an Answer to Notice of Appeal and/or a brief on any issues of law in connection with the appeal. The answer and brief must be filed no later than ten (10) days before the hearing date.
- B. Bills of Exceptions shall be governed by Section 10.40.23.
- C. Pleadings and briefs which may be filed by the parties in connection with a full board review shall be governed by Section 10.40.24.
- D. Motions shall be governed by Section 10.40.27.

10.40.27 Motions

An application to the Employee Appeals Board for an order shall be by written motion. Motions by any party shall be considered by the Employee Appeals Board under the following conditions:

- A. Motions and responses to motions shall be filed in writing unless made during a hearing.
- B. Motions shall state with particularity the grounds therefore and shall set forth the relief or order sought.
- C. Any motion heard prior to the merits shall be the responsibility of the moving party. The moving party shall be responsible for contacting the opposing party, the Hearing Officer and the Employee Appeals Board to arrange for a date and time for a telephone conference or a hearing on a motion unless by its nature no hearing

is required. After the hearing is arranged, the moving party shall confirm the arrangements in writing to the Employee Appeals Board and all other parties.

- D. A hearing on a motion may be conducted by telephone conference at the expense of the moving party.
- E. The Employee Appeals Board may, in its discretion, limit the time for filing motions in any appeal.
- F. The Employee Appeals Board shall issue orders on motions in an expeditious manner.

10.40.28 Filing of Pleadings and Other Documents; Copies To Be Made Available

- A. When an appeal is filed, the Employee Appeals Board shall assign it a docket number.
- B. All pleadings and other documents filed in the appeal shall be entered on a docket to be maintained by the Employee Appeals Board. The board shall make a notation of the filing date on all such pleadings and other documents. Pleadings and documents may be transmitted by facsimile equipment in situations the clerk determines are of an emergency nature or that present compelling circumstances.
- C. Copies, including certified copies, of pleadings and other documents filed in the appeal shall be made available to either party at a reasonable fee. (Refer to Section 10.40.18)
- D. Copies of any and all pleadings, briefs and requests filed by any party to an appeal must be served on every other party or his or her attorney and a Certificate of Service pursuant thereto must be filed with the Employee Appeals Board by the filing party.
- E. All pleadings, briefs and requests filed by any party to an appeal must be signed by such party or his or her attorney and must specify the assigned docket number.

10.40.29 Assessment of Fees and Costs

The Employee Appeals Board shall have the authority to establish reasonable fees and assess reasonable costs of conducting appeals.

10.40.30 Computation of Time

In computing any period of time prescribed or allowed under these rules, the Employee Appeals Board shall be guided by the Mississippi Rules of Civil Procedure.

10.40.31 Judicial Conduct

- A. The Hearing Officers of the Employee Appeals Board shall be guided by and subject to the canons of ethics of judicial conduct of the Mississippi State Bar.
- B. No Hearing Officer shall be removed from office during his or her term except by a finding of misfeasance, malfeasance or nonfeasance in office.

10.40.32 Amendment of Rules; Validity of Rules; Enforcement of Rules

- A. The State Personnel Board may amend these rules or promulgate new rules.
- B. If any one or more of these rules is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other of these rules.
- C. The Employee Appeals Board shall have the authority, duty and responsibility to abide by and enforce these rules.

SPB Form 1010-81 Rev. 9/96		STATE PERSONNEL BOARD GRIEVANCE FORM	
This form is to be used if the grievant is not satisfied with the oral decision of his or her immediate supervisor at the First Step of the Grievance Procedure. The form will be completed at each subsequent Step to which the grievance is advanced. If a grievance is settled orally with the immediate supervisor, this form should not be used.			
Agency		Date	
Name		Job Classification	
Mailing Address		Telephone Number(s)	
GRIEVANCE STATEMENT (Include identity of grievant and witnesses, if any.)			
RELIEF SOUGHT			
Grievant's Signature (or individual filing on behalf of grievant):			
DECISION OF IMMEDIATE SUPERVISOR			
Supervisor's Signature			
Date			
Employee Answer		I am satisfied with the answer to my grievance.	
		I am not satisfied with the answer to my grievance and wish to have it advanced to the next step.	

SPB Form 1010-81 Rev. 9/96		STATE PERSONNEL BOARD GRIEVANCE FORM	
SECOND STEP Reply to Employee Grievance, Next Level of Management			
Supervisor's Signature			
Date			
Employee Answer		I am satisfied with the answer to my grievance.	
		I am not satisfied with the answer to my grievance and wish to have it advanced to the next step.	
THIRD STEP Reply to Employee Grievance, Next Level of Management			
Supervisor's Signature			
Date			
Employee Answer		I am satisfied with the answer to my grievance.	
		I am not satisfied with the answer to my grievance and wish to have it advanced to the next step.	
FOURTH STEP Agency Decision			
Signature			
Date			

SPB Form 1020-86 Rev. 7/99	NOTICE OF APPEAL BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD	
	APPEALING PARTY	
VERSUS	NO.	
	RESPONDING PARTY	
NOTE: Supplemental pages may be attached if needed. Do not write on the reverse sides of this form or any supplemental page.		
1. Name, mailing address and telephone number of Appealing Party: <hr/> 		
2. Name, mailing address and telephone number of Appealing Party's attorney, if any: <hr/> 		
3. Name, mailing address and telephone number of Responding Party: <hr/> 		
4. Name, mailing address and telephone number of Responding Party's attorney, if known: <hr/> 		

SPB Form 1020-86 Rev. 7/99	NOTICE OF APPEAL BEFORE THE MISSISSIPPI EMPLOYEE APPEALS BOARD	
12. Appealing Party's statement of the final action taken and/or decision made as a result of the agency-level grievance proceedings, including the effective date of such final action: <hr/> 		
13. Appealing Party's statement of relief requested: <hr/> 		
14. List of any documents, exhibits, and/or supplemental pages which Appealing Party has attached to this Notice of Appeal: <hr/> 		
Signature of Appealing Party		
Date		
NOTE: To file an appeal, the Appealing Party should fill out and return this form to the Mississippi Employee Appeals Board, 301 North Lamar Street, Suite 100, Jackson, Mississippi 39201. The Notice of Appeal must be accompanied by copies of all documents generated by the agency-level grievance proceedings which took place prior to the filing of the appeal. A fee of fifty dollars (\$50.00) in the form of a cashier's check, bona fide attorney's check, or money order made payable to the Mississippi Employee Appeals Board must be filed by the Appealing Party with the Notice of Appeal. Cash or personal checks will not be accepted. The rules governing appeals are found in the Mississippi Employee Appeals Board Administrative Rules booklet. See also Sections 25-9-101 through 25-9-151 and 25-9-301 through 25-9-305, <u>Mississippi Code of 1972, Annotated</u> , as amended.		

SPB Form Rev. 3/93	STATE PERSONNEL BOARD ADA GRIEVANCE FORM	
Name		Date
Mailing Address		Telephone Number 8:00 a.m. to 5:00 p.m.
Job Classification (if applicable)		Agency
GRIEVANCE STATEMENT (Include identity of grievant and witnesses, if any.)		
RELIEF SOUGHT		
Grievant's Signature (or individual filing on behalf of grievant):		
Date:		
Agency Acknowledgment:		
Signature of Individual Investigating Grievance:		
Date:		
Agency:		
Title:		